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Please find below and/or attached an Office communication concerning this application or proceeding.

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1   RECORD OF ORAL HEARING
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3   UNITED STATES PATENT AND TRADEMARK OFFICE
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6   BEFORE THE BOARD OF PATENT APPEALS
7   AND INTERFERENCES
8   _____
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10   *Ex parte* GLYN OTTOFY
11   _____
12
13   Appeal 2009-005191
14   Application 10/705,310
15   Technology Center 3700
16   _____
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18   Oral Hearing Held: May 6, 2010
19   _____
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21   Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
22   BIBHU R. MOHANTY, *Administrative Patent Judges.*
23
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25   APPEARANCES:
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28   ON BEHALF OF THE APPELLANT:
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1   The above-entitled matter came on for hearing on Thursday, May 6,

2 2010, commencing at 9:14 a.m., at the U.S. Patent and Trademark Office,

3 600 Dulany Street, Alexandria, Virginia, before Paula Lowery, Notary

4 Public.

5 CLERK: Good morning. Calendar Number 27, Appeal No. 2009-5191, Mr.

6 Weiss.

7 JUDGE CRAWFORD: Good morning.

8 MR. WEISS: Good morning.

9 JUDGE CRAWFORD: You can begin when you're ready.

10 MR. WEISS: If I could, I wanted to give a very, very brief background

11 about the invention, and then I wanted to go right to one of the sets of claims

12 argued in the Briefs and focus on that.

13 The invention, of course, has to do with a live poker tournament. There are

14 two, sort of, poker-related concepts; and I believe a confusion of those two

15 concepts is sort of at the root of this rejection.

16 One concept is what I would call -- what I think is known in the art as, sort

17 of -- hand value. In other words, in poker you have a hand ranking system.

18 Three of a kind is better than a pair, a flush is better than three of a kind, that

19 kind of thing.

20 So if you're playing at a video terminal, you get a particular hand value, and

21 that's compared to a pay table. If you match one of the things on the pay

22 table, you win a jackpot.

23 If you're in a live table game of poker and two players remain in to compete

24 for the pot, the one with the absolute higher-value hand wins the pot. That's

25 one poker concept.

1   The second concept is a concept of elimination. In a multiple game poker

2   tournament, players can be eliminated at different rounds.

3   The elimination concept is fully distinct from a hand-value concept in the

4   sense that there are games going on at multiple tables, and a particular player

5   can advance with a low-value hand, relatively speaking.

6   Another player can be eliminated with a much higher value hand, perhaps,

7   playing at a different table; or even at the same table, if a player folds a high-

8   value hand and another player with a lower-value hand prevails, then there

9   can be an advancement or elimination having nothing to do in a specific way

10 with hand value.

11 Now, I want to focus specifically on Claims 2 and 3 and 13 and 14. Claims

12 2 and 3 are method claims. Claims 13 and 14 are apparatus claims. They're

13 essentially parallel claims in terms of the significant elements that are there

14 that are the subject of the rejection.

15 Each of these claims has as an element the concept of a finish number,

16 which is expressly defined in the claim as the order that each player is

17 eliminated from the tournament relative to other players.

18 This is the elimination concept. This is not a hand-value scoring type of

19 concept. In rejecting these claims on obviousness grounds with respect to

20 this element, the Examiner has relied upon the Walker reference. In

21 particular, Column 20, lines 15 - 22 of that reference.

22 If you look at that language, that's actually talking about ranking players

23 after each round by comparing hand values to a pay table. In other words,

24 that's a scoring concept. It's not an elimination concept. There's no

25 discussion in Walker of eliminating players from one round so they do not

26 advance to a later round in the same tournament.

1   We would submit that element is simply not present in the Walker reference.

2   If we then continue on, there are these other concepts and these other

3   features in these four claims. There's a concept of a finish equalization

4   number.

5   What that basically does is it allows the creation of teams of set number to

6   participate in a poker tournament. It also allows teams to participate where

7   they don't have a set number, yet they can still be scored in an equivalent

8   fashion to teams who do have the maximum number of players.

9   It sets up this mathematical formula whereby, for example, if there are a

10   maximum of five people on the team and you only have two, then you divide

11   two over five, and you create this finishing equalization number.

12   You then take into consideration the actual scores based on the order of

13   elimination, again not hand value. You take those actual values, and you

14   multiply them by the finishing equalization number.

15   The Marks reference has been cited with respect to these particular features:

16   the finish equalization number and this equalization number arrived at by

17   multiplying the finish number by the finishing equalization number. If you

18   look at Marks, all Marks describes is a team game in which the score of the

19   team is equal to the highest individual score of a single team member.

20   I think the example that's given in the cited portion of Marks is one in which

21   I think one player has a plus 100 score, someone has a negative score, and

22   there's someone else with like a plus 20 score. The score of the team is that

23   plus 100 high score.

24   So Marks is not an example of a case in which a maximum team

25   membership value is set. It's not an example of the feature of allowing

26   teams with less than the maximum to participate and still equalizing so that

1   everybody can be considered in an equivalent fashion.

2   Finally, I just wanted to add, with respect to the first grouping of claims:

3   Claims 1, 4 through 7, 10 through 12, 15 through 18. Claim 1 talks about

4   the placement finish being a predetermined formula having a dependence on

5   both a number of players on each team and the performance of each player.

6   Again, the Walker reference is the one cited with respect to this element, and

7   a review again of the relevant portions of that shows that's only disclosing a

8   value that's based on a single member of the team, not the value of every

9   player's performance. It's independent of the number of players on the team

10   because you're just taking the highest value.

11   So the players who were not counted toward that highest value, essentially,

12   make no contribution to the final score.

13   JUDGE FISCHETTI: Counsel, can I refer you to Walker, Column 16, in

14   which it discusses the best hand in a team scenario. If more than one player

15   on the team gets the highest pay-out result, a bonus can be awarded to the

16   team.

17   So isn't that, in effect, giving credence to the number of people on the team

18   in that you can get a double bonus in that scenario?

19   MR. WEISS: I think in that scenario they're allowing more than one

20   member of the team to share in the bonus, but you also receive a prize.

21   JUDGE FISCHETTI: No, receive another bonus.

22   MR. WEISS: I'm sorry, Your Honor, that's correct. But it's not disclosing

23   that each team member's score is going to count toward the creation of a

24   final score for the team as a whole. That's not, essentially, changing the

25   ranking of the team relative to other teams. That's just, basically, allocating

26   a prize to more than one player.

1 JUDGE FISCHETTI: Your claim language is quite broad in that it only

2 calls for a number of players, and I think that with that disclosure I'd be hard

3 pressed to see how that limitation was not met.

4 MR. WEISS: I think with respect to that language in Walker -- it's still not

5 describing a placement finish, which I think is a very specific term. It's a

6 ranking-type term.

7 That ranking is going to depend on the number of players. The example that

8 Your Honor has provided in Walker has nothing to do with the number of

9 players. It's not a multiplication factor. It also has to do with the

10 performance of each of the players.

11 I think each is a very specific term. That means that every member of the

12 team counts, not just the member having the highest score or the two

13 members each having the same highest score.

14 Thank you very much, Your Honors.

15   Whereupon, the proceedings at 9:29 a.m. were concluded.

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